HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

WRIT PETITION NO.18062 OF 2002

Between:

Kammari Lingavva

. . .Petitioner

AND

Ministry of Home Affairs and another

. . .Respondents

Counsel for the petitioner : Shri B.Parameshwar Rao

Counsel for the respondent No.1 : Shri A.Rajashekar Reddy
Assistant Solicitor General

Counsel for the respondent No.2 : Government Pleader for
Revenue

Dated: 22nd August, 2006

: ORDER :

In this petition, the petitioner has prayed for issue of a mandamus to the respondents to revise the date from which her husband late Shri Limbayya was granted pension under the Swatantrata Sainik Samman Pension Scheme, 1980 (for short 'the 1980 Scheme').

In paragraphs 2, 3 and 4 of her affidavit, the petitioner has averred that her husband submitted application for grant of pension on 18.11.1990 but the same was sanctioned to him only with effect from 28.08.1998. She has relied on the contents of order dated 13.08.1992 passed in Writ Petition No.2498 of 1992 and averred that the action of the respondents not to entertain her husband's claim for grant of pension from the date of application is illegal, arbitrary and unjustified.

In paragraphs 4 and 5 of the counter-affidavit filed on behalf of respondent No.1, the following averments have been made:

> "4. That the petitioner has claimed that her late husband was granted pension under the Swatantrata Sainik Samman Pension Scheme w.e.f. 22.8.1998. Now she is claiming that the pension should be antedated w.e.f. 18.11.1990 (claiming it the date of pension application of her late husband) and the arrears should be given to her. The records of the respondent Ministry reveal that pension was sanctioned to the husband of the petitioner. However, the said file is not traceable. In the absence of the said file, it is not possible to comment on the Writ Petition or to take further necessary action.
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> 5. That as submitted above, the relevant records of the case are not traceable. The petitioner has not provided a copy of

sanction order issued in favour of her husband. It is not possible to ascertain as to why the late husband of the petitioner was granted pension prospectively."

I have heard learned counsel for the parties and perused the record.

In the context of the averments contained in paragraphs 3, 4 and 8 of the writ petition and the contents of order dated 13.08.1992 passed in Writ Petition No.2498 of 1992, I repeatedly asked the learned counsel to show the application dated 18.11.1990, which her husband is said to have submitted for grant of pension under the 1980 Scheme by projecting himself as freedom fighter who has taken part in Hyderabad Liberation Movement, but learned counsel failed to produce the copy of the application.

In my opinion, the petitioner's failure to produce the basic document which constitutes the foundation of her claim for grant of pension with retrospective effect is sufficient for non-suiting her.

There is another reason for my disinclination to entertain the petitioner's prayer for antedating the grant of pension to her under the 1980 Scheme. While disposing of the Writ Petition No.2498 of 1992, this Court did not direct the respondents to grant pension to the petitioner's husband with effect from the date of application. If the petitioner's husband felt aggrieved by the tenor of the direction given by the learned Single Judge, then he should have challenged order dated 13.08.1992 by filing an appeal. He should have also challenged sanction order dated 28.08.1998. However, the fact of the matter is that neither the petitioner's husband nor the petitioner filed appeal against order dated 13.08.1992 nor they challenged the order of sanction. Therefore, in a petition filed after four years after grant of pension, a direction cannot be issued for entertaining the petitioner's claim for retrospective grant of pension under the 1980 Scheme and that too

when she has failed to place on record the document which constitutes the basis of her claim.

In the result, the writ petition is dismissed.

G.S.SINGHVI, CJ

Date: 22.08.2006

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